

CREDIT APPLICATION

For internal use only:

Sales Rep: \_\_\_\_\_

Return completed Application to your local ASG Sales Representative.

Credit Card Terms:  Open Account Term:  New Account:  Existing Acct#:

Please check the box(es) below:

Category/Brand(s):

ASG  AND1  TEAM  T5S

Discount \_\_\_\_\_%

Category Code:

INDEPENDENT  TEAM  T5S  CATALOG  E-COMMERCE  SPECIALTY RUNNING  TREND URBAN

**THIS CREDIT APPLICATION IS BEING SUBMITTED BY:**

Legal Name: \_\_\_\_\_

Trade Name/DBA: \_\_\_\_\_ D&B D-U-N-S No. \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Website: \_\_\_\_\_

Phone: \_\_\_\_\_ Fax: \_\_\_\_\_ Email: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_ Years in Business: \_\_\_\_\_

Date of Formation: \_\_\_\_\_ State of Formation: \_\_\_\_\_ Type of Business: (Corporation, LLC, Etc.): \_\_\_\_\_

Nature of Business: \_\_\_\_\_ Annual Sales Volume: \_\_\_\_\_

**LIST BELOW INFORMATION REGARDING THE FOLLOWING PERSONS: IF A PARTNERSHIP, EACH PARTNER. IF AN LLC, EACH MEMBER AND THE OFFICE HELD BY EACH. IF A CORPORATION, EACH OFFICER AND THE OFFICE HELD BY EACH.**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_ SSN: \_\_\_\_\_

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_

Home Address: \_\_\_\_\_ SSN: \_\_\_\_\_

**PERSON TO CONTACT REGARDING FINANCIAL MATTERS:**

Name: \_\_\_\_\_ Title: \_\_\_\_\_ Phone: \_\_\_\_\_

**ARE YOU CURRENTLY DOING BUSINESS OR HAVE YOU PREVIOUSLY DONE BUSINESS WITH AMERICAN SPORTING GOODS, ITS SUBSIDIARIES OR ITS AFFILIATES? Yes No**

If 'YES' under what name: \_\_\_\_\_ When? \_\_\_\_\_

**ARE YOUR RECEIVABLES AND/OR INVENTORY PLEDGED TO OTHERS? Yes No**

If 'YES' please explain: \_\_\_\_\_

ESTIMATED MONTHLY PURCHASES REQUIRED: \$ \_\_\_\_\_ DESIRED CREDIT LIMIT: \$ \_\_\_\_\_

PRIMARY BANK: \_\_\_\_\_ ACCOUNT #: \_\_\_\_\_

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**BANK REFERENCES (Financial institutions With Whom You Maintain Deposit Accounts and Have A Loan Outstanding):**

**Bank No. 1:** \_\_\_\_\_ **Account #** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_

Bank Trade Name: \_\_\_\_\_ Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Bank Credit Line: \_\_\_\_\_ Secured: Yes No Personal Guaranty: Yes No

**Bank No. 2:** \_\_\_\_\_ **Account #** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_

Bank Trade Name: \_\_\_\_\_ Phone No. \_\_\_\_\_ Fax No. \_\_\_\_\_

Bank Credit Line: \_\_\_\_\_ Secured: Yes No Personal Guaranty: Yes No

**TRADE REFERENCES (Companies You Have Actively Conducted Business With in the Past 12 Months):**

**Name:** \_\_\_\_\_ **Account #** \_\_\_\_\_ **Credit Line:\$** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax No. \_\_\_\_\_

**Name:** \_\_\_\_\_ **Account #** \_\_\_\_\_ **Credit Line:\$** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax No. \_\_\_\_\_

**Name:** \_\_\_\_\_ **Account #** \_\_\_\_\_ **Credit Line:\$** \_\_\_\_\_

Address: \_\_\_\_\_

Contact Name and Title: \_\_\_\_\_ Phone: \_\_\_\_\_ Fax No. \_\_\_\_\_

**PLEASE ATTACH SALES TAX EXEMPTION CERTIFICATE. We are required to charge sales tax if not received.  
PLEASE ATTACH COMPLETE ANNUAL REPORTS FOR THE PAST TWO FISCAL YEARS.**

By executing this application, the Credit Applicant expressly agrees that the Credit Agreement attached hereto shall be incorporated herein by reference, that all transactions between Credit Applicant and American Sporting Goods Corporation and all of its affiliates and subsidiaries ("ASG") shall be pursuant to the terms thereof and any such sales transactions by, or between, Credit Applicant and ASG ARE SUBJECT, IN ALL RESPECTS, TO THE TERMS AND CONDITIONS OF ASG ATTACHED HERETO (HEREINAFTER COLLECTIVELY REFERRED TO AS THE "TERMS"), EACH OF WHICH ARE INCORPORATED HEREIN, BY REFERENCE. The Credit Applicant in addition consents to allowing ASG to, at any time and from time to time, contact the Trade References and Bank References and agrees to allow such references to provide any information about the Credit Applicant that ASG, requests, notwithstanding any rights of the Credit Applicant to have such information protected from public dissemination or to be held in trust or pursuant to any privilege or protection. ASG reserves the right to, at any time, and from time to time, request additional information from the Credit Applicant. The English language version of this Application shall govern the relationship between the parties.

The Credit Applicant does hereby represent and warrant, in order to induce ASG to agree to sell goods and/or services to the Credit Applicant, that the information contained herein is true and correct in all respects and does not fail to state any facts necessary in order to cause the information to be so true and correct.

The Credit Applicant does hereby covenant to immediately advise ASG, in writing, of any facts or circumstances which would cause any of the information provided by the Credit Applicant to, in future, be inaccurate in any respect or fail to state any fact necessary to make the statements contained therein not misleading.

The Credit Applicant authorizes to ASG that the information provided in this Credit Application is true and correct and from time to time to (1) verify information supplied by the Credit Applicant, (2) obtain credit reports and conduct credit investigation, including obtaining bank and financial institution credit information, (3) reinvestigate credit at its sole discretion and (4) to act as a credit reference for Purchaser by responding to inquires from other creditors or potential creditors regarding transactions or experiences with Credit Applicant.

By executing below, Credit Applicant expressly consents to allowing ASG to contact all references and firms with whom Credit Applicant has established credit, and agrees to allow such references and firms to provide any information about the Credit Applicant that ASG requests, notwithstanding any rights of the Credit Applicant to have such information protected from public dissemination or to be held in trust or pursuant to any privilege or protection.

This credit application is not an agreement to extend credit, and nothing herein shall be deemed to create any obligation on the part of ASG to extend credit to the Credit Applicant, and the terms and conditions of such credit will be made by ASG in its sole and absolute discretion. The provision of credit, should

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ASG determine to extend credit terms, will be subject to the execution of a credit agreement in a form acceptable to ASG in its sole and absolute discretion, or such other documents acceptable to ASG in its sole and absolute discretion.

**ROUTING:** One of the following options must be marked. Failure to do so will cause ASG not to ship your order(s).

- We agree to allow ASG to choose the best and/or cheapest way to ship.
- We have completed the Customer Routing Guide and will provide to my sales representative.
- We have provided our own Routing Guide / Instructions to our sales representative.

IN WITNESS WHEREOF, THE UNDERSIGNED CREDIT APPLICANT HAS EXECUTED THIS CREDIT APPLICATION ON THE DATE FIRST WRITTEN ABOVE.

Applicant hereby gives its unconditional consent to have its non-business, personal consumer credit report and history obtained and used by ASG in connection with this credit application. Applicant acknowledges receipt of the attached Terms and Conditions. Applicant has read and reviewed the Terms and Conditions in detail and has had the opportunity to ask questions regarding the Terms and Conditions. Application hereby agrees to be fully bound by the Terms and Conditions as referenced herein.

Credit Applicant: \_\_\_\_\_

Signature of Authorized Agent of Applicant: \_\_\_\_\_  
Must be owner, officer, or partner

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date Signed: \_\_\_\_\_

**American Sporting Goods Corporation (ASG)  
Personal Guaranty**

**PERSONAL GUARANTY:** I, THE UNDERSIGNED GUARANTOR, PERSONALLY GUARANTY TO AMERICAN SPORTING GOODS CORPORATION ("ASG"), PAYMENT OF ANY OBLIGATION OF THE CREDIT APPLICANT, WHETHER PAST, PRESENT AND FUTURE, AND I HEREBY BIND MYSELF TO PAY ON DEMAND ANY SUM WHICH IS DUE ASG, FROM THE CREDIT APPLICANT WHENEVER THE COMPANY SHALL FAIL TO PAY THE SAME. I WAIVE NOTICE OF DEFAULT, NON-PAYMENT AND ANY MODIFICATION OR RENEWAL OF THIS CREDIT APPLICATION OR ANY DOCUMENT RELATED THERETO.

**WARRANT OF ATTORNEY TO CONFESS JUDGMENT.** THE GUARANTOR HEREBY IRREVOCABLY AUTHORIZES AND EMPOWERS THE PROTHONOTARY, ANY ATTORNEY OR ANY CLERK OF ANY COURT OF RECORD, OR ELSEWHERE, UPON THE OCCURRENCE OF A DEFAULT BY THE CREDIT APPLICANT, TO APPEAR FOR AND CONFESS JUDGMENT AGAINST THE GUARANTOR FOR SUCH SUMS AS ARE DUE AND/OR MAY BECOME DUE UNDER THIS PERSONAL GUARANTY, WITH OR WITHOUT DECLARATION, WITH COSTS OF SUIT, WITHOUT STAY OF EXECUTION AND WITH AN AMOUNT EQUAL TO TEN PERCENT (10%) OR \$1,000 (WHICHEVER IS GREATER) ADDED FOR COLLECTION FEES. TO THE EXTENT PERMITTED BY LAW, THE GUARANTOR RELEASES ALL ERRORS IN SUCH PROCEEDINGS. IF A COPY OF THIS CREDIT APPLICATION, VERIFIED BY AFFIDAVIT BY OR ON BEHALF OF THE HOLDER OF THIS GUARANTY SHALL HAVE BEEN FILED IN SUCH ACTION, IT SHALL NOT BE NECESSARY TO FILE THE ORIGINAL GUARANTY AS A WARRANT OF ATTORNEY. THE AUTHORITY AND POWER TO APPEAR FOR AND CONFESS JUDGMENT AGAINST THE GUARANTOR SHALL NOT BE EXHAUSTED BY THE INITIAL EXERCISE THEREOF AND MAY BE EXERCISED AS OFTEN AS THE HOLDER SHALL FIND IT NECESSARY AND DESIRABLE AND THE GUARANTY, OR COPIES THEREOF, SHALL BE A SUFFICIENT WARRANT THEREFOR. THE HOLDER HEREOF MAY CONFESS ONE OR MORE JUDGMENTS IN THE SAME OR DIFFERENT JURISDICTIONS FOR ALL OR ANY PART OF THE AMOUNT OWING HEREUNDER, WITHOUT REGARD TO WHETHER JUDGMENT HAS THERETOFORE BEEN CONFESSED ON MORE THAN ONE OCCASION FOR THE SAME AMOUNT. IN THE EVENT ANY JUDGMENT CONFESSED AGAINST THE GUARANTOR HEREUNDER IS STRICKEN OR OPENED UPON APPLICATION BY OR ON THE GUARANTOR'S BEHALF FOR ANY REASON, THE HOLDER IS HEREBY AUTHORIZED AND EMPOWERED TO AGAIN APPEAR FOR AND CONFESS JUDGMENT AGAINST THE GUARANTOR FOR ANY PART OR ALL OF THE AMOUNTS OWING HEREUNDER, AS PROVIDED FOR HEREIN, IF DOING SO WILL CURE ANY ERRORS OR DEFECTS IN SUCH PRIOR PROCEEDINGS.

**WAIVER OF TRIAL BY JURY.** THE UNDERSIGNED HEREBY EXPRESSLY, KNOWINGLY AND VOLUNTARILY WAIVES ALL BENEFIT AND ADVANTAGE OF ANY SUCH RIGHT TO A TRIAL BY JURY, AND HE/SHE WILL NOT AT ANY TIME INSIST UPON, OR PLEAD OR IN ANY MANNER WHATSOEVER CLAIM OR TAKE THE BENEFIT OR ADVANTAGE OF A TRIAL BY JURY IN ANY ACTION ARISING IN CONNECTION WITH THIS AGREEMENT OR ANY OF THE LOAN DOCUMENTS.

This Personal Guaranty shall be deemed to be a contract under the laws of the State of California and for all purposes shall be governed by and construed and enforced in accordance with the laws of said State without regard to the principles of conflicts of law thereof. The Undersigned Personal Guarantor hereto expressly submits to the personal jurisdiction of the federal and/or state courts sitting in Orange County, California, in any action on, relating to or mentioning this Credit Application, this Personal Guaranty or any documents executed and delivered in connection with either of them.

The undersigned personal guarantor, recognized the his/her individual credit history may be a necessary factor in the evaluation of this Personal Guaranty, hereby consents to and authorized the use of a consumer credit report on the undersigned by ASG, and/or its employees and agents, from time to time as may be needed in the credit evaluation process.

IN WITNESS WHEREOF, THE UNDERSIGNED PERSONAL GUARANTOR HAS EXECUTED THIS PERSONAL GUARANTY ON THE DATE FIRST WRITTEN ABOVE.

**Note:** Guarantor gives his/her unconditional consent to have his/her non-business, personal consumer credit report and history search obtained and used by ASG in connection with this Personal Guaranty.

Guarantor: \_\_\_\_\_

Signature of Guarantor: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_ Date Signed: \_\_\_\_\_

## American Sporting Goods Corporation (ASG) Terms and Conditions

**Purchaser's Acceptance of Seller's Terms and Conditions** – Seller acknowledges and accepts Purchaser's order for products identified in Purchaser's order (the "Products") expressly conditional, however, upon Purchaser's assent to all of the terms and conditions contained herein and no others. Objection is hereby made to any terms or conditions at variance with different than or additional to those stated herein. No terms or conditions other than those stated herein, whether contained in Purchaser's order or elsewhere the purports to vary or are different than these terms and conditions or include additional terms and conditions shall be binding on Seller unless hereafter set forth in a writing signed by Seller. Purchaser's assent to these Terms and Conditions shall be conclusively presumed from its receipt of any Products ordered. Purchaser's order constitutes an offer to Seller which will be subject to this written acceptance by Seller. The acceptance incorporates these Terms and Conditions.

**Prices** – Prices are subject to change without notice. All Products (original orders and backorders) will be billed at prevailing prices at the time of shipment. All prices quoted are FCA from a port of shipment determined by Seller to be convenient to one of the factories or warehouses used by Seller or one of its suppliers in or outside the United States in accordance with INCOTERMS 2000. Any cash discount, which is expressly provided by the Seller herein, will only apply to the price of Products at the shipping point. A cash discount will not be allowed on any charges made for loading, storage, transportation or taxes.

**Payment Terms** – Unless otherwise agreed in writing, Seller's terms of payment are net thirty (30) days from the date of invoice. All amounts due and owing are to be paid either by check or wire transfer of immediately available U.S. funds. A service charge of 1.5% per month (18% annually), or the maximum rate allowed by applicable law, whichever is less, will be charged to Purchaser on all past due amounts. If Purchaser has an account that past due, such Purchaser will not be eligible for discounts, and will not receive further shipments until account is current. Seller shall have the right to terminate this and any other agreements between Purchaser and Seller upon the failure of Purchaser to timely make payment or otherwise perform in accordance with these Terms and Conditions. If at any time in the opinion of Seller, financial responsibility of the Purchaser becomes impaired or unsatisfactory, Seller reserves the right to require payment in advance or other security for any future sales and payment for all goods sold to date becomes immediately due and payable.

PURCHASER HEREBY ACKNOWLEDGES AND AGREES THAT IN THE EVENT PURCHASER FAILS TO MAKE FULL PAYMENT OF THE PURCHASE PRICE (SUBJECT TO THE TERMS HEREOF) WITHIN THE TERMS STATED HEREIN, PURCHASER DOES HEREBY AUTHORIZE AND EMPOWER THE PROTHONOTARY OR CLERK OR ATTORNEY OF ANY COURT OF RECORD OR ELSEWHERE, UPON SUCH NONPAYMENT, TO APPEAR FOR AND TO CONFESS JUDGMENT AGAINST PURCHASER, WITHOUT PRIOR NOTICE TO PURCHASER OR OPPORTUNITY TO BE HEARD, FOR THE UNPAID AMOUNT OF THE PURCHASE PRICE DUE TO SELLER, WITH OR WITHOUT DECLARATION, WITH COSTS OF SUIT, RELEASE OR ERRORS, WITHOUT STAY OF EXECUTION, AND WITHIN TEN PERCENT (10%) OR \$1,000 (WHICHEVER IS GREATER) ADDED FOR COLLECTION FEES, AND THE PURCHASER ALSO WAIVES THE RIGHT OF INQUISITION ON ANY REAL ESTATE THAT MAY BE LEVIED UPON TO COLLECT ANY SUCH SUMS AND DOES HEREBY VOLUNTARILY CONDEMN THE SAME AND AUTHORIZE THE PROTHONOTARY TO CLERK TO ENTER UPON A WRIT OF EXECUTION AND UNDERSIGNED'S SAID VOLUNTARY CONDEMNATION, AND THE UNDERSIGNED FURTHER AGREES THAT SAID REAL ESTATE MAY BE SOLD ON A WRIT OF EXECUTION AND HEREBY WAIVES AND RELEASES ALL RELIEF FROM ANY AND ALL APPRAISEMENT, STAY OR EXEMPTION LAWS OF ANY STATE NOW IN FORCE OR HEREAFTER TO BE PASSED. THE AUTHORITY PURCHASER HAS GRANTED BY TERMS OF THE FOREGOING SENTENCE SHALL NOT BE EXHAUSTED BY ONE EXERCISE THEREOF AND PURCHASER SPECIFICALLY AGREES THAT SELLER MAY CAUSE SUCH JUDGMENTS TO BE CONFESSED FROM TIME TO TIME SO LONG AS ANY PORTION OF THE SUMS DUE HEREUNDER SHALL BE UNPAID WHENEVER AND SO OFTEN AS SELLER MAY ELECT IN THE SOLE DISCRETION OF SELLER.

**Set Off** – Seller is authorized to apply toward any payment of any monies due Seller hereunder any sums now or hereafter owed to Purchaser or any affiliate company by Seller or any affiliate company. In no event may Purchaser set-off against its obligations to pay the purchase price due Seller under this invoice any monies or claims owed or alleged to be owed by Seller, or any affiliate of Seller, to Purchaser of any nature whatsoever.

**Taxes** – Any tax (other than income taxes of Seller), tariffs levies, duties, license or permit fees, excise or governmental charge imposed upon the production, sale, use, transportation or importation of, or value added to, the Products sold hereunder shall be timely paid by Purchaser in addition to the purchase price. Purchaser shall provide Seller, upon request, with completed exemption certificates for any tax from which Purchaser claims exemption shall indemnify Seller from and against any and all loss, cost, damage or expense arising therefrom.

**Delay** – Seller shall be excused for any failure to perform due to acts of God, war, riot, embargoes, fire, explosion, strike or other differences with workmen, shortages, delay in transportation, breakdown or accident, actions taken to comply with any law or regulation, or any other cause, without limitation, beyond Seller's control in the reasonable operation of its business. Seller will use its best efforts to meet all delivery and shipping dates set forth on the front hereof, but all such dates constitute good faith estimate only. Seller shall not be liable or responsible for failure to meet any specific shipping or delivery date so long as Seller acts in good faith.

**Delivery** – Notwithstanding anything to the contrary implied by the FCA shipping term, or by any subsequent shipping instructions from Purchaser to Seller, Seller shall be deemed to have satisfied its shipping obligations, when such Products have been delivered to a freight forwarder selected by Seller or, at Seller's option, selected by Purchaser, and Seller has received a Forwarder's Cargo Receipt or a Forwarder's Certificate of Receipt ("FCR") or its equivalent (such as a bill of lading) indicating that such Products have been received and that the entity issuing the FCR will arrange, at Purchaser's expense, to have such Products shipped to the Purchaser. The Purchaser shall be responsible for ensuring that the freight forwarder picks up the Products from the factory or warehouse within not more than 72 hours from the date the Products are ready to ship. In the event that the Products remain in the factory or warehouse after the expiration of such 72 hour period, then, at Seller's option, Seller may assess Purchaser a penalty of \$100 for each day (or part of a day) that the goods remain in the factory or warehouse and if the Products remain in the factory or warehouse for more than three (3) business days following the expiration of such 72 hour period and, in addition to the penalty (which shall remain payable by Purchaser), Seller shall have the right to retain for its account the purchase price for such order and to declare the order abandoned and to place the Products back in its general inventory. In the event that delays are encountered by Seller in obtaining equipment, materials and/or services, the shipping schedule will be extended as necessary to accommodate such delays. Seller shall not be liable for any failure to make a delivery date nor for any loss or consequential or other direct or indirect damages of any kind arising from a failure or a delay in delivery, however caused. Seller reserve the right to make deliveries in installments. Partial delivery of an order does not obligate Seller to make further deliveries. Shipping dates given in advance of actual shipment are estimates by Seller and shall not be deemed to represent fixed or guaranteed shipping dates. Seller may demand adequate assurance of performance prior to delivery of any goods to Purchaser or Purchaser's designee and may suspend any shipments to Purchaser or Purchaser's designee until such assurance is given to Seller. For purposes of this section "adequate assurance" shall be determined solely by Seller in its exclusive discretion.

**Demurrage** - Notwithstanding any provision to the contrary, Purchaser shall be liable for all demurrage charges incurred after the Seller delivers the Products to the carrier.

**Cancellation** – Orders may be canceled by the Purchaser only upon written notification to Seller's Customer Service Department at least 60 days prior to ship date.

**Refused Shipments** – Refused shipments will be charged a 15% restock fee. Purchasers with two, consecutive "refused" shipments will be put on "Shipping Hold." Upon thorough review of the account by the Credit Department, the Purchaser may regain shipping status. All transportation costs are the responsibility of the customer and will be considered as a past due invoice.

## American Sporting Goods Corporation (ASG) Terms and Conditions

**Shortage Claims/Proofs of Delivery** – Purchaser will be responsible for inspecting shipments upon delivery for total carton count and condition. Any shortages or evidence of damage to merchandise must be noted on the carrier's delivery receipt and reported to the carrier's local office. All shortages must be reported within ten (10) days of receipt in writing to our Customer Service Department. Purchaser will be required to furnish our Customer Service Department with an invoice or shipping order number and an itemization of all shortages/overages by product code, size and quantity. In the event that no such notice is given, it will be conclusively presumed that no shortages or damages exist.

**Variation in Products** – Delivery of Products shall be subject to normal variations in weight, color, size, quantities, etc., as are standard in the trade.

**Returns** – All requests for returns must be in writing to our Customer Service Department. All merchandise returns are subject to acceptance by our Customer Service Department. No return will be authorized after 60 days from the date of delivery. Upon approval by our Customer Service Department, special return authorization numbers will be issued to the Purchaser and must be affixed to the outside of each carton. Products returned without our special return authorization numbers will be refused and returned unopened. Credit will not be issued for any Products determined Seller to have been damaged by improper use or care of, or for which no defect can be found. Credits will not be given for Products used for display purposes. At Seller's option, return freight must be paid by Purchaser. A 15% restocking charge for all returns will be levied unless the return is due to our error and reported to Seller's Customer Service Department within 10 days of receipt. Additional charges will be assessed if re-boxing, unlacing, and/or removal of customer tags or stickers are necessary.

**Limitation of Liability** - PURCHASER'S EXCLUSIVE REMEDY AND SELLER'S EXCLUSIVE LIABILITY FOR THE BREACH OF ANY OF SELLER'S WARRANTIES SHALL BE TO REPLACE NONCONFORMING PRODUCTS AT THE ORIGINAL POINT OF DELIVERY OR TO REFUND PURCHASER'S PURCHASE PRICE FOR THE NONCONFORMING PRODUCTS, WHICHEVER OPTION SELLER SELECTS. SUCH REPLACEMENT OR REFUND WILL BE MADE ONLY UPON THE RETURN OF THE NONCONFORMING PRODUCTS, WHICH MAY BE RETURNED AT SELLER'S COST ONLY AFTER INSPECTION BY SELLER AND RECEIPT BY PURCHASER OF DEFINITIVE SHIPPING INSTRUCTIONS FROM SELLER.

SELLER'S LIABILITY FOR ANY LOSS OR DAMAGE ARISING OUT OF OR RESULTING FROM OR IN ANY WAY CONNECTED WITH THE PRODUCTS SHALL NOT EXCEED PURCHASER'S PURCHASE PRICE FOR THE PRODUCTS UPON WHICH SUCH LIABILITY IS BASED, REGARDLESS OF WHETHER SUCH LIABILITY ARISES IN CONTRACT (INCLUDING, BUT NOT LIMITED TO, FAILURE OR DELAY IN PERFORMANCE OR DELIVERY DUE TO ANY CAUSE WHATSOEVER), TORT, (INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE OR STRICT LIABILITY) OR OTHERWISE. IN NO EVENT SHALL SELLER BE LIABLE TO PURCHASER FOR LOSS OF PROFITS OR REVENUE OR INTERRUPTION OF BUSINESS OR FOR ANY INCIDENTAL, CONSEQUENTIAL, DIRECT, SPECIAL OR PUNITIVE DAMAGES.

**Limited Warranty** - As to the Products sold to Purchaser, Seller warrants good title and conformance to its standard specifications and those specifications, if any, agreed upon in writing by Seller. SELLER MAKES NO WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SELLER MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, WRITTEN OR ORAL EXCEPT AS EXPRESSLY SET FORTH HEREIN. Purchaser shall promptly notify Seller of any suspected breach of Seller's warranties and hold the Products for Seller's inspection.

**Waiver of Claims** - Regardless of prior delays, any claim from Purchaser from any cause, including, but not limited to, claims based on the quantity of goods received, shall be deemed waived unless made in writing within ten (10) days of the receipt by Purchaser of the goods to which such claim relates. No legal proceedings may be brought by Purchaser for any breach of this contract more than six (6) months after the date Purchaser receives such goods.

**Indemnity** - Purchaser agrees to release, indemnify, defend and hold harmless Seller, and Seller's employees, officers, directors, shareholders, partners and affiliates from and against any and all loss, cost, damage, or expense, including legal fees, costs and expenses and actual or alleged injuries to and death of any person and loss of or damages to property arising, directly or indirectly, from (a) any violation of Purchaser of any applicable law, rule or regulation and (b) the Products sold hereunder, other than such claims, demands, obligations and liabilities which result directly from the sole and exclusive gross and intentional negligence of Seller and the aggregate liability of Seller pursuant hereto shall not exceed, even in the instance of the sole and exclusive gross and intentional negligence of Seller, the amount paid to Seller pursuant to the terms hereof.

**Non-Sufficient Funds (NSF)** – NSF checks will automatically put an account on "Shipping Hold." Checks will be resubmitted after a first return and a \$35.00 fee charged to the Purchaser's account. If a check is returned a second time, another \$35.00 fee will be assessed and the account will be immediately referred to a corporate attorney. Upon resolution of NSF check and related fees, account will be referred to the Credit Department for review and possible revision of Credit terms.

**Security Interest** - Until such time as Seller has received payment, in full, for the Products sold hereunder, Seller shall have a security interest in the Products supplied and to be supplied by Seller hereunder and is hereby irrevocably appointed as attorney-in-fact of the Purchaser in order to execute and deliver such financing and other documents and instruments as Seller may, at any time, and from time to time, desire in connection therewith. Purchaser agrees to extend such cooperation as Seller may require, at any time, or from time to time, with respect to the execution of such financing statements or other documents necessary, in the opinion of Seller, in order to cause such security interest to be perfected against third parties. In the event of a default by Purchaser, Seller shall have available to it all rights afforded, at law or in equity, to a secured seller including, but not limited to, the right to enter upon the premises where such goods shall be located for purposes of recovering the same and Purchaser shall cooperate with respect to any such action. Upon repossession of such security, Purchaser agrees to waive any and all rights to notice of sale, reinstatement and any and all rights afforded Purchaser as a Debtor under the Uniform Commercial Code. Regardless of Purchaser's title to such Products, risk of loss thereof shall be controlled by the conditions recited above.

**Transshipment/Diversion of Merchandise** – In order to enhance the image and goodwill of the Seller and its Products that has been created by the trademarks and trade names of Seller, we will only sell selected retail outlets on the express condition that such outlets may not resell to any person or entity who is not the final user of the Products. Accordingly, the resale, transshipment or other diversion of Products to any person or entity who is not the final user is prohibited and may constitute a breach of the contract of sale, for which we may seek appropriate legal remedies, including money damages and injunctive relief and/or termination of Purchaser's ability to purchase goods on credit. We reserve the right to cancel all previously accepted orders of any Purchaser who we believe engages in such activity and to demand the return at Purchaser's expense, of all diverted merchandise and any other merchandise previously shipped to the Purchaser.

**Patent/Copyright/Trademark** – If any material is furnished to Purchaser's specifications, Purchaser shall indemnify Seller, its affiliated companies and its successors and assigns against all liabilities and expenses to include reasonable attorney fees resulting from any claim of infringement of any patent/copyright/trademark in connection with the processing of such materials.

**Credit Approval** – Shipments, deliveries and performance of work shall at all times be subject to the approval of Seller's Credit Department. Seller may at any time decline to make any shipment or delivery or perform any work except upon receipt of payment or security or upon terms and conditions satisfactory to such Department.

**American Sporting Goods Corporation (ASG)  
Terms and Conditions**

**Assignability** - Neither this contract nor any claim arising directly or indirectly out of or in connection with this contract will be assignable by either party or by operation of law, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign its rights to an entity which acquires substantially all of its assets or business. This document shall be binding upon and inure to the benefit of each party hereto and their respective permitted successors and assigns.

**Attorney Fees** – In the event that the Seller must institute or engage counsel for a lawsuit against the Purchaser to collect any monies that is due hereunder or if the Seller successfully defends against a lawsuit instituted by the Purchaser against it hereunder, then the Seller shall be entitled to its costs and expenses to include reasonable attorney fees incurred in connection with such lawsuit.

**Notices** - Notice by either Seller or Purchaser will be made only by facsimile or similar electronic transmission, effective on the first business day after confirmed receipt, or by letter addressed to the other party at its address shown herein, effective three business days after deposit with the U.S. Postal Services, postage prepaid, or one business day after deposit with a recognized overnight express service.

**FOREIGN GOVERNMENT OR INDIAN NATION** – If Purchaser is a foreign government or Indian Nation, PURCHASER HEREBY EXPRESSLY WAIVES ANY DEFENSE BASED UPON SOVEREIGN IMMUNITY IN THE EVENT OF A DISPUTE BETWEEN PURCHASER AND SELLER RELATED TO THE SALE OF THE PRODUCTS. PURCHASER EXPRESSLY AGREES TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF THE UNITED STATE OF AMERICAN TO ADJUDICATE ANY DISPUTE HEREUNDER.

**ARBITRATION AND DISPUTES BETWEEN THE PARTIES.** Any and all disputes, controversies and/or claims with respect to the transactions contemplated by these Terms and Conditions shall be submitted to arbitration. Such arbitration shall be held in Orange County, California and shall be administered by JAMS pursuant to its Comprehensive Arbitration Rules and Procedures (the “Arbitration Rules”). The arbitration shall be conducted by an arbitrator selected in accordance with the Arbitration Rules. The arbitration proceedings shall be kept private and confidential and both parties agree not to disclose any aspect of the proceedings without the prior written consent of the other party. The arbitrator shall have the power to award specific performance or injunctive relief and to determine the scope or applicability of this arbitration clause. The arbitration award shall be final and binding upon the parties. Purchaser consents to service of all papers filed in connection with the initiation of any such arbitration proceeding or any other papers filed in connection with any such arbitration proceeding via facsimile and/or any method reasonably calculated to provide actual notice, in addition to any other method authorized by the Arbitration Rules. Purchaser waives and agrees not to assert as a defense or otherwise, in any proceeding, any claim that Purchaser is not subject to the jurisdiction of JAMS or the federal and/or state courts sitting in Orange County, California, in the case of any proceeding to enforce any arbitration award, or that Purchaser's property is exempt or immune from attachment or execution. Purchaser acknowledges and agrees that any arbitration award may be entered and/or confirmed in any court in the world having jurisdiction thereof.

**Jurisdiction, Applicable Law** – These Terms and Conditions shall be governed by the laws of the State of California, U.S.A. without regard to its conflict of laws provisions. The parties hereto expressly submit to the personal jurisdiction of the federal and/or state courts sitting in Orange County, California, and agree that such courts may be utilized if necessary to obtain injunction relief hereunder or to enforce any arbitration award hereunder. The Hague Convention and the United Nations Convention on Contracts for the International Sale of Goods shall not apply to the construction or interpretation of these Terms and Conditions or affect any of its provisions.

**General** - We may immediately terminate the Purchaser's ability, to purchase merchandise on credit or otherwise, at any time at our sole discretion. Prices and other terms and conditions are subject to change by us without prior notice. We reserve the right to discontinue product lines and to make changes in products at any time. No supplement, modification or amendment of these terms and conditions will be binding upon us unless made in writing and signed by a duly authorized representative of our company. The terms and conditions herein being final, complete and an exclusive statement of the contract of sale. Purchaser's rights under this contract may not be assigned or sold by purchaser without prior written consent. This document, together with any credit application and/or credit agreement, constitutes the entire agreement of the parties with respect to this transaction. No person is authorized to make any oral modification hereof, and written modification may be made only by Seller's duly authorized officers. In the event of any conflict or variance between the terms hereof and Purchaser's business terms, these terms shall prevail. In the event that any provision contained herein is held to be invalid or unlawful, such provision shall be severable from the remaining provisions hereof which shall remain in full force and effect. No waiver of any provision hereof shall constitute a waiver of any other provision, and no single provision shall be held to constitute a continuing waiver or a subsequent waiver. All photocopy, or fax signatures of the Purchaser shall be effective, valid and enforceable as if it was an original signature.

**Compliance** – By signing the Credit Application attached hereto, Purchaser agrees, warrants and represents that it fully complies with all applicable laws, rules and regulations governing any and all transactions arising out of Purchaser attempting to or actually conducting business with Seller including, but not limited to the USA Patriot Act; the Foreign Corrupt Practices Act; the Bank Secrecy Act; UCP 600; Financial Crimes Enforcement Network; Financial Action Task Force; Export Administration Regulations; and any other rule, regulation and/or law now existing or later enacted applicable to such transactions. Seller shall not be responsible for Purchaser's failure to so comply.

- END OF DOCUMENT -

## UNIFORM SALES & USE TAX CERTIFICATE – MULTIJURISDICTION

The below-listed states have indicated that this form of certificate is acceptable, subject to the following notes. The issuer and the recipient have the responsibility of determining the proper use of this certificate under applicable laws in each state, as these may change from time to time.

Issued to Seller: American Sporting Goods Corporation and Subsidiaries.  
 Address: 101 Enterprise, Suite 100  
 Aliso Viejo, CA 92656

Account Number (For Office Use Only)

I certify that:  
 Name of Firm: \_\_\_\_\_ DBA Name: \_\_\_\_\_  
(Required Name of Firm) (Required if Using a DBA)

Is engaged as a registered: **(Required -- Please check all that apply)**  
 Lessor (See Notes)     Manufacturer     Retailer  
 Seller (California)     Wholesaler     Other \_\_\_\_\_

Street Address: \_\_\_\_\_ City, State, & Zip: \_\_\_\_\_  
(Required Street Address) (Required City, State & Zip)

and is registered with the below listed states and cities within which your firm would deliver purchases to us and that any such purchases are for wholesale, resale, ingredients, or components of a new product or service to be resold, leased, or rented in the normal course of business. We are in the business of wholesaling, retailing, manufacturing, leasing (renting) the following:

Description of business: \_\_\_\_\_  
(Required Description of business)

General description of tangible property or taxable services to be purchased from the seller: **Athletic Footwear**

You are required to complete the following for all state(s) in which you are registered unless it is not listed or a state specific form is required as outlined below.

[Click here for Instructions 1-21 regarding Uniform Sales Use Tax Certificate](#)

**Alaska, Delaware, Montana, New Hampshire, & Oregon do not require a resale certificate, but we do require this form be completed, with the exception of the tax number, to serve as documentation that product purchased from American Sporting Goods Corporation and Subsidiaries is for resale**

State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser	State	State Registration, Seller's Permit, or ID Number of Purchaser
Alabama 2	_____	Louisiana	<u>state specific form required*</u>	Ohio 26	_____
Arizona 22	_____	Maine 9	_____	Oklahoma 16	_____
Arkansas	_____	Maryland 10	_____	Pennsylvania	PA REV 1220 Mandatory (p.9)
California 3	_____	Massachusetts	<u>state specific form required*</u>	Rhode Island 17	_____
Colorado 1	_____	Michigan 11	_____	South Carolina	_____
Connecticut 4	_____	Minnesota 12	_____	South Dakota 18	_____
Dist. of Columbia 5	_____	Mississippi	_____	Tennessee	_____
Florida 23	<u>state specific form required*</u>	Missouri 13	_____	Texas 19	_____
Georgia 6	_____	Nebraska 14	_____	Utah	_____
Hawaii 1, 7	_____	Nevada	_____	Vermont	_____
Idaho	_____	New Jersey	_____	Virginia	<u>state specific form required*</u>
Illinois 1, 8	_____	New Mexico 1, 15	_____	Washington 20	_____
Indiana	<u>state specific form required*</u>	New York	<u>NY ST-120 Mandatory (p. 8)</u>	West Virginia	<u>state specific form required*</u>
Iowa	_____	North Carolina 25	_____	Wisconsin 21	_____
Kansas	_____	North Dakota	_____	Wyoming	<u>state specific form required*</u>
Kentucky 24	_____				

I further certify that if any property or service so purchased tax free is used or consumed by the firm as to make it subject to a Sales or Use Tax, we will pay the tax due directly to the proper taxing authority when state law so provides or inform the seller for added tax billing. This certificate shall be a part of each order, which we may hereafter give to you, unless otherwise specified, and shall be valid until cancelled by us in writing or revoked by the city or state.

Under penalties of perjury, I swear or affirm that the information on this form is true and correct as to every material matter.

**Authorized Signature (Required):** \_\_\_\_\_ (Owner, partner, or corporate officer)

**Title : (Required)** \_\_\_\_\_ **Date:** \_\_\_\_\_ **(Required)**

\*State specific forms may be downloaded from our website [www.avia.com](http://www.avia.com) with the following exceptions: for a Florida DR-13 form, please contact the Florida Department of Revenue at 941-361-6001; for a New Mexico form, Please contact the New Mexico Taxation and Revenue Department at 505-841-6200. If you have any questions, contact the New Accounts Department at 1-800-848-8000.